In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 273

LOUISVILLE AND NASHVILLE RAILROAD COMPANY, ILLINOIS CENTRAL RAILROAD COMPANY, SOUTHERN RAILWAY COMPANY, MISSOURI PACIFIC RAILROAD COMPANY, MEMPHIS UNION STATION COMPANY, AND UNION RAILWAY COMPANY, PETITIONERS

v.

INTERSTATE COMMERCE COMMISSION, CITY OF MEMPHIS, TENNESSEE, AND RAILWAY LABOR EXECUTIVES' ASSOCIATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE INTERSTATE COMMERCE COMMISSION IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 36a–50a) is reported at 360 F. 2d 44. The opinion of the district court (Pet. App. 7a–25a) is reported at 230 F. Supp. 456.

JURISDICTION

The judgments of the court of appeals (Pet. App. 51a–55a) were entered on March 31, 1966. The petition for a writ of certiorari was filed on June 21,

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1966. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTE INVOLVED

The relevant provisions of the Interstate Commerce Act, 49 U.S.C. 1(18)–(20), (22), and 49 U.S.C. 5(2), (4), (8), are set forth in Appendix A, pp. 1a–6a, to the petition.

QUESTIONS PRESENTED

1. Whether, in light of their usage, value and importance to interstate commerce, the railroad tracks in the Memphis Union Station constitute a "line of railroad" or "any portion of a line of railroad" within the meaning of Section 1(18) of the Interstate Commerce Act, which may not be abandoned without the Commission's approval.

2. Whether the agreement between two of the petitioners for the joint use of the tracks belonging to one of them required prior Commission approval under Sections 5 (2), (4) of the Act.[1]

STATEMENT

On April 1, 1964, after transporting interstate passengers to and from Memphis, Tennessee, via the Memphis Union Station, for more than half a century, petitioners abandoned the station and the numerous tracks leading into it (Pet. App. 57a). The

[1] Since the test of the Interstate Commerce Commission's jurisdiction over abandonments (Section 1(18)) is identical to that of its jurisdiction over trackage-use agreements (Section 5), we shall not discuss separately the second question presented by the petition.

abandonment of these facilities, created "at great expense" (Pet. App. 49a), was effected without application to, or prior approval of, the Interstate Commerce Commission. As a result of the abandonment, interstate passengers were obliged to use several smaller terminals at scattered points within Memphis, and 120 employees lost their jobs; of these, 75 have not found other employment (Pet. App. 11a). Also without Commission approval, petitioners L & N and Illinois Central entered into an agreement for the joint use of the latter's tracks and the terminal facilities incidental thereto in Memphis.

On a complaint filed by the Interstate Commerce Commission, and after full hearing, the United States District Court for the Western District of Tennessee permanently enjoined the "continued abandonment, without authority from the Interstate Commerce Commission, of a line of railroad and the operation thereof at Memphis Union Station * * * in violation of Section 1(18)–(20) of the Interstate Commerce Act," 49 U.S.C. 1(18)–(20) (Pet. App. 32a). The court also enjoined "the continuation and effectuation" of L & N and Illinois Central's trackage-use agreement (Pet. App. 33a). The court of appeals affirmed (Pet. App. 51a–55a).

ARGUMENT

As petitioners recognize (Pet. 10), the trackage within the Memphis Terminal constitutes a "line of railroad" or a "portion of a line of railroad," the abandonment of which requires prior Commission ap-

proval[2] under Section 1(18) of the Act, 49 U.S.C. 1(18), unless it falls within the exemption of Section 1(22) for "spur, industrial, team, switching, or side tracks, located or to be located wholly within one State * * *" (49 U.S.C. 1(22)).[3] The courts below properly held, in accord with numerous administrative and judicial precedents, that that narrow exemption is inapplicable here. There is no occasion for further review.

It cannot seriously be contended "that all stations, whatever their character and relation to transportation, are outside the authority granted by section 1(18); for 'a line of railroad' does not cease to be such merely because it is called, or embraced within, a 'station'." *Boston Terminal Co. Reorganization*, 312 I.C.C. 373, 377. Indeed, for more than forty years, the Commission has asserted jurisdiction, pursuant to both Section 1(18) and Section 5 of the Act, over trackage embraced within railroad stations. See, *e.g.*, *Public Convenience Application of Kansas City Southern Ry.*, 94 I.C.C. 691 (jurisdiction over "terminal tracks" at Independence, Mo., depot); *Abandonment of Line by Chicago, Rock Island & Pac. Ry. Co.*, 131 I.C.C. 421, 429, 431 ("tracks in the

[2] Commission approval, had it been sought, could have been conditioned upon the making of adequate provision for the transfer of passengers between terminals (*Chicago* v. *Atchison, T. & S. F. R. Co.*, 357 U.S. 77) and for the protection of displaced employees. *Interstate Commerce Commission* v. *Railway Labor Executives Assn.*, 315 U.S. 373.

[3] The requirement of Commission approval for trackage-use agreements (49 U.S.C. 5(2)) similarly does not apply to contracts for the "use of spur, industrial, team, switching, or side tracks" (49 U.S.C. 1(18)). See n. 1, *supra*.

terminals at Denver and Colorado Springs"); *Construction by Cincinnati Union Terminal Co.*, 138 I.C.C. 297 (construction of passenger station and "lines of railroad incident thereto"); *Atchison, T. & S.F. Ry. Co. Operation*, 224 I.C.C. 39; *St. Louis, S.F. & T. Ry. Co. Trackage Rights*, 267 I.C.C. 30, 35–37; *Boston Terminal Co. Reorganization, supra.*[4] Also cf. *Wheeling & L.E. Ry. Co.* v. *Pittsburgh & W. Va. Ry. Co.*, 33 F. 2d 390 (C.A. 6), certiorari denied, 280 U.S. 593.

Whether, in a particular case, trackage constitutes a "line of railroad" or "any portion" thereof, or is within the categories of "spur" or "side" tracks, has been held to depend on several factors, properly applied by the courts below. It is relevant to determine how the track is used—whether "for the regular train haul in transportation proper" or for "incidental services";[5] the value of the trackage and the appur-

[4] As the district court pointed out (Pet. App. 15a–16a), this longstanding administrative action is firmly supported by the statutory language:

> In Sec. 1(3)(a) the term "railroad" is defined as including ". . . all switches, spurs, tracks, terminals and terminal facilities . . . freight depots, yards and grounds . . ." It therefore appears that the Act recognizes terminals and terminal facilities as a category separate from spurs and switches. This is an indication that terminal tracks are not meant to be excluded from I.C.C. jurisdiction by Sec. 1(22). Furthermore, the fact that the statute thus defines "railroad" as including "terminals" and "terminal facilities" is at least some indication that terminals or terminal tracks may be part of a "line of railroad" within the meaning of Sec. 1(18).

[5] *Detroit & M. Ry. Co.* v. *Boyne City, G. & A.R. Co.*, 286 Fed. 540, 547 (E.D. Mich.); *Meyers* v. *Jay Street Connecting*

tenances thereto in relation to the carrier's financial position;[6] and whether the construction or abandonment of the trackage significantly affects interstate commerce or is primarily a matter of local concern.[7]

All these considerations support the decision below. Prior to their unilateral abandonment by petitioners, the tracks at the Memphis Union Station had been used for more than fifty years to carry interstate passengers on through passenger trains, not just to perform some "incidental" service characteristic of "spur" or "side" tracks. The tracks and terminal facilities were constructed "at great expense" (Pet. App. 49a),[8] and their abandonment, which leaves in-

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R., 262 F. 2d 676, 678 (C.A. 2). In *St. Louis, S.F. & T. Ry. Co. Trackage Rights*, 267 I.C.C. 30, 35, the Commission held that its approval was not necessary for a track-usage agreement whereby one carrier allowed another to use a small section of its "mainline" track for a few switching operations, but added: "It is equally clear that the use by the applicant of the tracks of the Texas company for the operation of its through passenger trains and the joint use by it of the passenger terminal of the Union Station company are transactions requiring the approval of this Commission under . . . section 5(2) of the act." 267 I.C.C. at 36.

[6] *Texas & Pac. Ry. Co.* v. *Gulf, Colo. & Santa Fe Ry. Co.*, 270 U.S. 266, 275, 277–78; *Railroad Commission* v. *Southern Pac. Co.*, 264 U.S. 331, 345–347.

[7] *United States* v. *Idaho*, 298 U.S. 105; *Piedmont & Northern Ry.* v. *Interstate Commerce Commission*, 286 U.S. 299, 311; *Alabama & Vicksburg Ry. Co.* v. *Jackson & Eastern Ry. Co.*, 271 U.S. 244, 250; *Texas & Pac. Ry. Co.* v. *Gulf, Colo. & Santa Fe Ry. Co.*, 270 U.S. 266, 278; *Railroad Commission* v. *Southern Pac. Co.*, 264 U.S. 331, 346.

[8] In 1925, the Commission valued the property of petitioner Memphis Union Station Company for rate-making purposes at $2,259,000. *Memphis Union Station Co.—Valuation*, 97 I.C.C. 418, 423 (1925).

terstate passengers (and presumably baggage and mail) scattered at several terminals in Memphis, entails "important changes in the handling of interstate traffic and passengers." *Railroad Commission* v. *Southern Pac. Co.*, 264 U.S. 331, 346. Moreover, the extensive tracks and facilities at the Memphis Union Station (Pet. App. 57a) were "the sole terminal facilities held out to the public for access to the main line. So long as these tracks are impressed with such an additional function they are, for purposes of § 1(18)–(22), inseparable from the main line and they may not be abandoned without an I.C.C. certificate of public convenience and necessity." *Meyers* v. *Jay Street Connecting R.*, 262 F. 2d 676 (C.A. 2).

Petitioners themselves have, in the past, acknowledged the Commission's jurisdiction over the trackage involved here. In January 1962, only two years before the abandonment, petitioners applied to the Commission under Section 5(2) for approval of a two-year extension of their agreement concerning operation of the facilities of the Memphis Union Station.[9] This application was granted. *Memphis Union Station Co.—Extension of Operating Agreement*, I.C.C. Finance Docket No. 21933, April 19, 1962 (unreported). Such an application would have been both unnecessary and beyond the Commission's jurisdiction if the trackage in Memphis Union Station consisted solely of "spur, industrial, team, switching, or side tracks," as petitioners now urge. See 49 U.S.C. 1(18).

[9] Petitioner Illinois Central apparently was not a party to this application.

Petitioners' present position—based on a strained reading of *Railroad Commission* v. *Southern Pac. Co.*, 264 U.S. 331, and of the Act's legislative history [10]—cannot be reconciled with their position in 1962 or, more significantly, with long-standing administrative and judicial interpretations of the applicable provisions of the Act.[11] Considering their use, value and importance to interstate commerce, the tracks and appurtenances at the Memphis Union Station are

[10] Nowhere in the legislative material relied upon by petitioners (Pet. 11–17) is there any suggestion that all station trackage is beyond the Commission's jurisdiction. Indeed, shortly after Sections 1 (18)–(22) were enacted, the Commission held that it did have jurisdiction over such tracks. See pp. 4–5, *supra*. The tenor of the material referred to in the petition is that facilities (including depots) of primarily local character would remain under the jurisdiction of State Commissions. The Memphis Union Station is not such a facility.

[11] Petitioners' argument is also founded upon their repeated confusion of *abandonments* of a line of railroad with discontinuances of passenger service. It is clear, that where "the railroad is merely discontinuing a portion of its service, whether it be passenger or freight, there is no abandonment under Section 1 (18-20)." See *Board of Public Utility Comm'rs of N.J.* v. *United States*, 158 F. Supp. 98, 100–101 (D. N.J.); see also *Gulf, M. & O.R. Co.* v. *Louisiana Public Service Comm'n*, 120 F. Supp. 250 (E.D. La.). Thus, it is not true, as petitioners contend (Pet. 23–24), that the discontinuance of a substantial portion of the nation's passenger service shows that abandonments of trackage in railroad stations has been thought to be beyond ICC jurisdiction. That there is no relation between discontinuances of service and Commission jurisdiction over abandonments under Section 1(18) is demonstrated by petitioners' own recognition that at least some station tracks are within the Commission's jurisdiction (Pet. 11). The absence of Commission approval prior to discontinuance of service to the many stations with "through" tracks is explained in the same way as the absence of approval with regard to stations with "stub-end" tracks—*i.e.*, Section 1(18) simply does not apply to discontinuances. Petitioners' persistent characterization of the Memphis tracks as "stub-end", more-

plainly within Commission jurisdiction under Section 1(18). It has long been settled that "the purpose of the statute to develop and maintain an adequate railway system for the people of the United States requires a broader and more liberal interpretation [of Sections 1(18)–(22)] than that to be drawn from mere dictionary definitions of the words employed by Congress." *Piedmont & Northern Ry.* v. *Interstate Commerce Commission,* 286 U.S. 299, 311 (valuable trackage important to interstate commerce is not "industrial" or "interurban" track excluded from ICC jurisdiction by Section 1(22)).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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over, is wholly beside the point. It is inconceivable, we submit, that the Commission's jurisdiction would turn on whether through passenger trains come in and out of the station in question on "stub-end" or some other kind of trackage.

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